

1 General Government Cabinet

2 Kentucky Board of Medical Licensure

3 (Amendment)

4 201 KAR 9:081. Disciplinary proceedings.

5 RELATES TO: KRS 311.530-311.620, 311.990, 218A.205

6 STATUTORY AUTHORITY: KRS 311.565(1)(a)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.565(1)(a) authorizes the
8 board to promulgate regulations to regulate the conduct of licensees. KRS 311.595 and
9 311.597 authorize disciplinary action against licensees for specified offenses. The
10 purpose of this administrative regulation is to set forth the procedures to be followed in
11 handling formal and informal disciplinary proceedings before the board, such that the
12 proceedings will be conducted with due regard for the rights and privileges of all
13 affected parties.

14 Section 1. Definitions. (1) "Executive director" means the executive director of the
15 board or any assistant executive directors appointed by the board.

16 (2) "General counsel" means the general counsel of the board or any assistant
17 general counsel appointed by the board.

18 (3) "Board" means the Kentucky Board of Medical Licensure or its inquiry or hearing
19 panels.

20 (4) "Grievance" means any allegation in whatever form alleging misconduct by a
21 physician.

1 (5) "Charge" means a specific allegation contained in any document issued by the
2 board or its inquiry or hearing panels alleging a violation of a specified provision of the
3 Kentucky Medical and Osteopathic Practice Act.

4 (6) "Complaint" means a formal administrative pleading authorized by the inquiry
5 panel that sets forth charges against a physician and commences a formal disciplinary
6 proceeding.

7 (7) "Show cause order" means an order directing the named physician to show
8 cause why the board should or should not take a specified action based on specified
9 information which the order alleges to be true.

10 (8) "Hearing officer" means the person designated and given authority by the board
11 to preside over all proceedings pursuant to the issuance of any complaint or show
12 cause order.

13 (9) "Informal proceedings" means proceedings instituted at any stage of the
14 disciplinary process with the intent of reaching an informal dispensation of any matter
15 without further recourse to formal disciplinary procedures.

16 (10) "Act" means the Kentucky Medical and Osteopathic Practice Act.

17 Section 2. Reception of Grievances; Investigations. (1) Grievances may be
18 submitted by any individual, organization or entity. The board shall retain a written form
19 upon which grievances may be made and any party submitting a grievance may be
20 required to complete the form and required to include the party's name and address
21 unless the grievance is submitted anonymously. [~~and may also be required to give their~~
22 ~~affidavit acknowledging the truth and veracity to the best of their knowledge and belief~~
23 ~~of the information contained in the grievance.~~]

1 Board members or employees may initiate a grievance simply by providing a written
2 memorandum to the Executive Director. If the Board receives an anonymous
3 grievance, an investigation will only be conducted if the grievance is accompanied by
4 sufficient corroborating evidence as would allow the board to believe, based upon a
5 totality of the circumstances, that a reasonable probability exists that the grievance is
6 meritorious.

7 (2) The board shall initiate each investigation pertaining to prescribing or dispensing
8 of controlled substances within seventy-two (72) hours of the date of receipt of the
9 grievance. All grievances shall be investigated as necessary and as promptly as
10 possible, and presented to the inquiry panel for review. Investigations pertaining to
11 prescribing or dispensing of controlled substances shall be presented to the inquiry
12 panel within one hundred twenty (120) days of the date of receipt of the grievance
13 unless the circumstances of a particular grievance make it impossible to timely present
14 the grievance to the inquiry panel. The Executive Director may hold an investigation
15 pertaining to prescribing or dispensing of controlled substances in abeyance for a
16 reasonable period of time in order to permit a law enforcement agency to perform or
17 complete essential investigative tasks, following a request by the requesting law
18 enforcement agency. In each instance when an investigation pertaining to prescribing
19 or dispensing of controlled substances is not presented to the inquiry panel within one
20 hundred twenty (120) days of the date of receipt of the grievance, the investigative
21 report will plainly state the circumstances of that particular grievance or investigation
22 that made timely presentation to the inquiry panel impossible. The inquiry panel and
23 Executive Director shall have the authority to direct any investigation and shall possess

1 any and all powers possessed by the board in regard to investigations. The inquiry
2 panel shall further be empowered to request the attendance of any person at any
3 meeting of the inquiry panel in regard to the investigation of any grievance or
4 consideration of any disciplinary matter. The failure, without good cause, of any
5 physician licensed to practice medicine or osteopathy by the board to appear before the
6 inquiry panel when requested shall be considered unprofessional conduct in violation of
7 KRS 311.595(9).

8 (3) The inquiry panel shall be empowered to request compliance with the reporting
9 requirements of KRS 311.605-311.606 and may pursue investigations, on its own
10 initiative, in regard to acts of noncompliance or any other perceived violation of the Act.

11 Section 3. Reports and Recommendations; Petitions. (1) When in the opinion of the
12 inquiry panel a grievance warrants the issuance of a complaint against a physician, the
13 inquiry panel shall cause a complaint to be prepared.

14 (2) When in the opinion of the executive director a grievance warrants the issuance
15 of a complaint against a physician and circumstances do not allow the timely
16 presentation of the grievance to the inquiry panel, the executive director shall cause a
17 complaint to be prepared.

18 (3) When in the opinion of the executive director or the inquiry panel a disciplinary
19 matter warrants the issuance of a show cause order against a physician, the executive
20 director or the inquiry panel shall cause a proposed order to be prepared.

21 (4) The board, on its own initiative, may issue a show cause order against a
22 physician in regard to any application for licensure, obtaining, retaining or reobtaining
23 licensure.

1 (5) Nothing in this subsection shall be construed to limit the board's power to deny a
2 license to any applicant without a prior hearing upon a finding that the applicant has
3 violated any provision of the Act.

4 Section 4. Complaints. (1) The complaint shall be signed and dated. The complaint
5 shall be styled in regard to the matter of the license to practice in the Commonwealth of
6 Kentucky held by the named physician and shall be designated with an appropriate
7 case number.

8 (2) The complaint shall set forth the board's jurisdiction in regard to the subject
9 matter of the complaint and shall further set forth, in numerical paragraphs, sufficient
10 information to apprise the named physician of the general nature of the charges.

11 Section 5. Show Cause Orders. (1) The show cause order shall be signed by an
12 officer of the board and shall be dated. The show cause order shall be styled in regard
13 to the license, application for license or application for renewal, registration or
14 reregistration of license to practice in the Commonwealth of Kentucky held by or
15 submitted by the named physician, appropriately, and shall be designated with an
16 appropriate order number.

17 (2) The show cause order shall set forth the board's jurisdiction in regard to the
18 subject matter of the order and shall further set forth, in numerical paragraphs, the
19 information which the board accepts to be true and the statutory basis for the board's
20 finding that grounds exist for the discipline of the named physician's license.

21 (3) The show cause order shall direct the named physician to show cause why
22 disciplinary action should not be taken in view of the matters expressed in the order.

1 Section 6. Orders to Respond. Upon issuance of a complaint the inquiry panel shall
2 issue an order directing the charged physician to respond within thirty (30) days after
3 receiving notice of the complaint, and informing the physician that failure to respond
4 may be taken by the board as an admission of the charges.

5 ~~[Section 7. Orders of Temporary Restriction. An order temporarily suspending,~~
6 ~~limiting or restricting the license held by the named physician shall set forth the grounds~~
7 ~~which the inquiry panel believes support a finding that sufficient reasonable cause exists~~
8 ~~to believe that the continued unaffected practice by the named physician would~~
9 ~~constitute a danger to the health, welfare and safety of the physician's patients or of the~~
10 ~~general public.]~~

11 Section 7. [8:] Notice and Service of Process. (1) Any notice required by the Act or
12 this administrative regulation shall be in writing, dated and signed by the appropriate
13 person.

14 (2) Service of notice and other process shall be made by hand-delivery or delivery
15 by certified mail to the physician's last known address of which the board has record or
16 by such service on the named physician's attorney of record. Failure of the named
17 physician to receive actual notice after execution of the prescribed service shall not
18 prejudice the board from pursuing proceedings that result in the denial or discipline of
19 the named physician's license.

20 ~~[Section 9. Hearings Pursuant to Order Temporarily Suspending, Limiting or~~
21 ~~Restricting a License. (1) A physician whose license has been temporarily suspended,~~
22 ~~limited or restricted shall, upon written request, be accorded hearing on the board's~~
23 ~~order.~~

1 ~~—(2) Any findings of fact or conclusions of law rendered by the hearing officer~~
2 ~~pursuant to a hearing on an order of temporary discipline shall not be binding upon the~~
3 ~~hearing panel in its ultimate determination regarding the charges contained in the~~
4 ~~complaint, nor shall the hearing officer thereafter be prejudiced from presiding at the~~
5 ~~hearing on the complaint.~~

6 ~~—(3) At the hearing on the order of temporary discipline, the hearing officer may~~
7 ~~entertain any motion timely submitted in regard to any matter concerning the disciplinary~~
8 ~~case, provided, however, that any orders issued pursuant to such motions shall not be~~
9 ~~considered appealable.~~

10 ~~—(4) Either party to the hearing on the order of temporary discipline may petition the~~
11 ~~hearing panel to review the order of the hearing officer either sustaining, modifying or~~
12 ~~withdrawing the inquiry panel's order by filing a written petition delineating those aspects~~
13 ~~of the hearing officer's determination with which the party takes exception and~~
14 ~~requesting the hearing panel to review the hearing officer's determination. The hearing~~
15 ~~panel may grant or deny review in its discretion.~~

16 ~~—(5) Nothing in this section shall be construed to limit either party's right to appeal an~~
17 ~~order sustaining, modifying or withdrawing an order of temporary discipline to the circuit~~
18 ~~court of the county in which the board's offices are located as provided by statute.~~
19 ~~However, the filing of an appeal shall not prejudice the board's jurisdiction to continue~~
20 ~~the proceeding in regard to the charges contained in the complaint.]~~

21 Section 8. [10.] Proceedings Pursuant to the Issuance of a Complaint or Show
22 Cause Order. (1) Appointment of hearing officer. The board shall appoint a hearing
23 officer who is empowered to preside at any and all proceedings, to rule upon all motions

1 and objections, to prepare and submit proposed findings of fact, conclusions of law and
2 to perform any other act necessary to the proper conduct of the proceedings.

3 (2) Appointment of the prosecuting attorney. The board's general counsel shall act
4 as the prosecuting attorney in regard to any disciplinary proceeding, provided, however,
5 that the board may appoint special prosecuting attorneys in its discretion. The
6 prosecuting attorney shall not participate in any deliberations of the board pursuant to
7 the issuance of a complaint, show cause order or order of temporary discipline.

8 (3) Appointment of advisory counsel. The board may appoint a representative of the
9 Attorney General's office, the board's general counsel, or other attorney to act as
10 advisory counsel to the board in regard to any deliberations of the board pursuant to the
11 issuance of a complaint, show cause order or order of temporary discipline.

12 (4) Form of pleadings; service. Pleadings may be in any neat form provided that all
13 pleadings must be dated and signed by the offering party. The original of all pleadings
14 must be filed with the executive director for entry into the official record and copies must
15 be served on the hearing officer, the opposing party and any other person who might be
16 designated by the hearing officer.

17 (5) Prehearing conferences. Upon motion of either party or upon his or her own
18 initiative, the hearing officer may order that a prehearing conference be held. The
19 prehearing conference may be the forum for consideration of any matter properly before
20 the hearing officer including all motions, discovery, stipulations, identification of issues,
21 dates of future proceedings and objections.

1 (6) Discovery. Either party may at any time after the issuance of a complaint or
2 show cause order move the hearing officer to order that discovery from the other party
3 be allowed by any of the following methods:

4 (a) Oral deposition, provided, however, that either party shall have the right to move
5 the hearing officer to order that the deposition be entered into the record in lieu of
6 further testimony by the witness;

7 (b) Request for a more definite statement;

8 (c) Request for production of names of witnesses, documents and other
9 demonstrative evidence; and

10 (d) Request for a brief synopsis of the testimony expected to be given by any expert
11 witness.

12 The hearing officer may limit or allow discovery of any matter relevant to the issues
13 and may issue protective orders as necessary.

14 (7) Hearings. Hearings shall proceed in accordance with the rules of examination
15 applicable in courts of law in the Commonwealth. The rules of evidence applicable in
16 courts of law in the Commonwealth shall apply, provided, however, that hearsay
17 evidence shall be admissible unless irrelevant or grossly prejudicial. The order and
18 burden of proof shall be established by the hearing officer, provided, however, that the
19 burden of proof shall be upon the charged physician in any hearing on the charges
20 contained in a show cause order. The hearing officer shall rule upon any motions or
21 objections and may require the submission of briefs in regard to any issue. The hearing
22 officer may allow opening and closing statements by either party, or other offers of

1 prosecution or defense that will allow the orderly and expeditious conduct of the
2 proceedings.

3 (8) Record. The hearing officer shall be charged with the responsibility of compiling
4 a written record of the proceedings which shall contain all evidence introduced at the
5 hearing and all pleas, motions, objections, responses, rulings and other legal
6 documents which the hearing officer deems properly part of the record.

7 (9) Presentation of record, hearing officer's proposed findings, conclusions and
8 recommendations. The hearing officer shall present the record, his or her proposed
9 findings of fact, conclusions of law and recommendations to the executive director for
10 deliberation by the hearing panel. The hearing officer shall serve a copy of his findings,
11 conclusions and recommendations on all parties at least twenty (20) days prior to the
12 date set for the hearing panel's final determination. All parties shall have the right to file
13 exceptions to the hearing officer's findings, conclusions and recommendations ten (10)
14 days prior to the date set for the hearing panel's final determination.

15 (10) Briefs. Any party to the proceeding may move the hearing officer to allow briefs
16 to be filed with the hearing panel prior to the hearing panel's final determination. The
17 hearing officer may grant the motion and establish a briefing schedule but only if the
18 hearing officer believes that such a procedure would substantially aid the hearing panel
19 in its deliberations. Briefs shall not exceed five (5) pages in length unless otherwise
20 allowed by the hearing officer. The hearing panel may, on its own initiative, order that
21 briefs be submitted.

1 (11) Oral argument. Any party to the proceeding may move the hearing panel to
2 allow oral argument prior to the hearing panel's final determination. The hearing panel
3 may order oral arguments on its own initiative.

4 (12) Board's findings of fact, conclusions of law and final order, remand. At the
5 conclusion of its deliberations the hearing panel may adopt the hearing officer's
6 proposed findings, conclusions and recommendations of action in whole or in part or
7 may reject them totally and prepare its own. The hearing panel shall enter a final order
8 dated and signed by an officer of the hearing panel stating its ultimate determination.
9 Prior to, during or subsequent to any deliberations the hearing panel may remand the
10 matter to the hearing officer for further proceedings as directed.

11 Section 9. Meetings of the Board and Panels. (1) The full membership of the
12 Board shall meet quarterly each calendar year, in the months of March, June,
13 September, and December. At such meetings, the Board will make licensing decisions
14 regarding initial applications for licensure, make decisions regarding recommendations
15 made by its various statutory committees, determine whether to enter into contractual
16 relationships, and address issues of general policy or interpretation of statute.

17 (2) The members of Inquiry Panel A shall meet bimonthly each calendar year, in
18 the months of February, April, June, August, October, and December. At its February,
19 April, August, and October meetings, Inquiry Panel A will finally resolve cases in which
20 a hearing has been conducted or a negotiated settlement tendered, will determine
21 whether to grant requests to modify or terminate previously accepted negotiated
22 settlements, will determine appropriate action upon recently completed investigations,
23 and will make licensing decisions regarding renewal applications. At its June and

1 December meetings, which coincide with the meeting of the full Board, Inquiry Panel A
2 will take appropriate action upon recently completed investigations of prescribing or
3 dispensing of controlled substances and other matters that require immediate attention.

4 (3) The members of Inquiry Panel B shall meet bimonthly each calendar year, in
5 the months of January, March, May, July, September, and November. At its January,
6 May, July, and November meetings, Inquiry Panel B will finally resolve cases in which a
7 hearing has been conducted or a negotiated settlement tendered, will determine
8 whether to grant requests to modify or terminate previously accepted negotiated
9 settlements, will determine appropriate action upon recently completed investigations,
10 and will make licensing decisions regarding renewal applications. At its March and
11 September meetings, which coincide with the meeting of the full Board, Inquiry Panel B
12 will take appropriate action upon recently completed investigations of prescribing or
13 dispensing of controlled substances and other matters that require immediate attention.

14 Section 10. Definitions. "A conviction relating to controlled substances" shall
15 include any conviction or plea to criminal charges, regardless of adjudication, that is
16 based upon or resulted from, in whole or part, allegations of conduct involving the
17 improper, inappropriate or illegal use, possession, transfer, prescribing or dispensing of
18 controlled substances. The underlying facts of the offense, rather than the title of the
19 offense named in the plea or judgment of conviction, will be determinative of whether
20 the conviction or plea was "relating to controlled substances."

21 Section 11. Mandatory Reporting; Mandatory Disciplinary Sanctions; Emergency
22 Action; Expedited Proceedings. (1)(a) Every applicant for initial licensing to practice
23 medicine or osteopathy within the Commonwealth of Kentucky shall report upon their

1 initial application any criminal conviction they have sustained or any plea of guilt, plea of
2 nolo contendere or Alford plea they have entered to criminal charges in any state,
3 regardless of adjudication;

4 (b) Every applicant for initial licensing to practice medicine or osteopathy within the
5 Commonwealth of Kentucky shall report upon their initial application any disciplinary
6 action taken or sanction imposed upon their license to practice medicine or osteopathy
7 in any state, to include surrendering or placing their license in an inactive or retirement
8 status to resolve a pending investigation by the licensing authority;

9 (c) Every applicant for initial licensing to practice medicine or osteopathy within the
10 Commonwealth of Kentucky shall report upon their initial application if they are currently
11 under investigation by the licensing authority of any other state for possible violations of
12 the licensing or regulatory statutes of that state;

13 (d) Every person licensed to practice medicine or osteopathy within the
14 Commonwealth of Kentucky shall report to the board any criminal conviction or plea of
15 guilt, nolo contendere, or Alford plea to any criminal charges, regardless of adjudication,
16 within ten (10) days of the entry of judgment of conviction or the entry of the plea,
17 entered into in any state. As part of this reporting, the licensee shall provide a copy of
18 the judgment of conviction or plea documents;

19 (e) Every person licensed to practice medicine or osteopathy within the
20 Commonwealth of Kentucky shall report to the board within ten (10) days of receipt,
21 notice of any disciplinary action taken or sanction imposed upon their license in any
22 state, including surrendering their license or placing their license into inactive or retired
23 status to resolve a pending licensing investigation. As part of this reporting

1 requirement, the licensee shall provide a copy of the order issued by or entered into
2 with the other licensing board;

3 (f) Failure to report a criminal conviction or plea, or action taken by another
4 licensing board, as required of an applicant by subsections (a)-(c), above, shall
5 constitute a violation of KRS 311.595(9) and (12). Upon a finding by the board that the
6 applicant committed such violation, the appropriate Panel shall impose a fine of five
7 thousand dollars (\$5,000) and the appropriate sanction mandated by subsections (2),
8 (3) or (4), infra. In addition to these minimum mandatory sanctions, the Panel may
9 impose any additional sanction authorized by KRS 311.595, including denial of the
10 application or revocation of the license previously issued based upon the incomplete
11 information;

12 (g) Failure to report a criminal conviction or plea, or action taken by another
13 licensing board as required of a licensee by subsections (d) and (e), above, shall
14 constitute a violation of KRS 311.595(9) and (12). Upon a finding by the board that the
15 licensee committed such violation, the appropriate Panel shall impose a fine of five
16 thousand dollars (\$5,000) and the appropriate sanction mandated by subsections (2),
17 (3) or (4), infra. In addition to these minimum mandatory sanctions, the Panel may
18 impose any additional sanction authorized by KRS 311.595 based upon all of the
19 information available to the Panel at the time of action;

20 (2)(a) If an initial applicant reports that they are the subject of a pending criminal
21 investigation or of a pending investigation by a state licensing authority, the Board shall
22 defer any action upon that initial application until it has received official notice that the

1 criminal or state licensing investigation has been completed and official notice of what
2 action was taken as a result of the investigation.

3 (b) If an initial applicant has been convicted of a felony offense or entered a plea of
4 guilt, an Alford plea or a plea of nolo contendere to any felony charge relating to
5 controlled substances, regardless of adjudication, in any state, the Board may exercise
6 its normal discretion to grant or deny the application, based upon the available facts. If
7 the Board should grant a license to such an initial applicant, the Board shall, at a
8 minimum, permanently ban the applicant from prescribing or dispensing controlled
9 substances as an express condition of granting the license. If the Board grants the
10 license subject to a permanent ban, it may impose other conditions in addition to that
11 permanent ban as express conditions of granting the license;

12 (c) If a licensee has been convicted of or entered a plea of guilt, an Alford plea or
13 a plea of nolo contendere to any felony offense relating to controlled substances,
14 regardless of adjudication in any state, the appropriate Panel shall, at a minimum,
15 permanently ban the licensee from prescribing or dispensing controlled substances as a
16 disciplinary sanction. In addition to this minimum sanction, the Panel may take any
17 appropriate disciplinary action authorized by KRS 311.595 against the license, or in lieu
18 of the minimum sanction, the Panel may revoke the license, based upon the facts
19 available to the Panel at the time of action.

20 (3)(a) If an initial applicant has been convicted of a misdemeanor offense relating
21 to controlled substances or entered a plea of guilt, an Alford plea or plea of nolo
22 contendere to a misdemeanor charge, regardless of adjudication, in any state, the
23 Board may exercise its normal discretion to grant or deny the application, based upon

1 all available information. If the Board should grant the application, the board shall, at a
2 minimum, ban the applicant from prescribing or dispensing controlled substances for a
3 period of two (2) to five (5) years as an express condition of granting the license. If the
4 Board grants the license subject to a ban, it may impose other conditions in addition to
5 that ban as express conditions of granting the license;

6 (b) If a licensee has been convicted of or entered a plea of guilt, an Alford plea or a
7 plea of nolo contendere to a misdemeanor offense relating to prescribing or dispensing
8 controlled substances, regardless of adjudication in any state, the appropriate Panel
9 shall, at a minimum, ban the licensee from prescribing or dispensing controlled
10 substances for a period of two (2) to five (5) years as a disciplinary sanction. In addition
11 to this minimum sanction, the Panel may take any appropriate disciplinary action
12 against the license, or in lieu of the minimum sanction, may revoke the license, based
13 upon the facts available to the Panel at the time of action.

14 (4)(a) If an initial applicant has surrendered their professional license or placed that
15 license into an inactive or retired status to resolve a pending licensing investigation, the
16 Board shall not grant a license to that initial applicant, unless the licensing authority of
17 that state has subsequently reissued or reinstated the license. If the licensing authority
18 of the state has subsequently reissued or reinstated the license, the board may exercise
19 its normal discretion in determining whether to grant or deny the application based upon
20 the available facts.

21 (b) If an initial applicant has had a disciplinary action taken against or sanction
22 imposed upon the applicant's license to practice medicine or osteopathy in any state,
23 the board shall, at a minimum, impose the same substantive sanctions imposed by the

1 other state as an express condition of granting the license, or may deny the application,
2 or, in addition to the minimum sanction, impose additional sanctions as an express
3 condition of granting the license, based upon the facts available at the time;

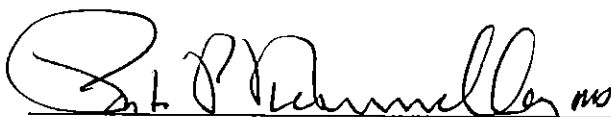
4 (c) If a licensee has had disciplinary action taken against or sanctions imposed
5 upon their license to practice medicine or osteopathy in any state, the appropriate Panel
6 shall, at a minimum, impose the same substantive sanctions as disciplinary sanction
7 against their Kentucky license. In addition to this minimum sanction, the Panel may
8 take any appropriate additional disciplinary action against the license, or in lieu of the
9 minimum sanction, the Panel may revoke the license, based upon the facts available to
10 the Panel at the time of action.

11 (5) Failure to report either a criminal conviction or plea, or disciplinary sanctions by
12 another licensing board, as required by this section, shall constitute "a violation of law
13 which constitutes an immediate danger to the public health, safety, or welfare," for
14 purposes of KRS 311.592 and 13B.125. If the Board or one of its Panels learns that a
15 licensee has suffered a qualifying criminal conviction or disciplinary sanction and has
16 failed to report it as required by this section, the Panel or its Chair may immediately
17 issue an emergency order appropriately suspending or restricting the licensee in
18 accordance with this section. If such an emergency order is issued and an emergency
19 hearing is conducted pursuant to KRS 13B.125(3), the hearing officer shall not modify
20 or amend the scope of the emergency order if there is substantial evidence to support
21 the finding that the licensee failed to report a qualifying criminal conviction or
22 disciplinary sanction as required by this section.

1 (6) If the only violation charged in a Complaint against the licensee is a criminal
2 conviction or disciplinary sanction described in this section, and the conviction or
3 disciplinary action may be proved by accompanying official certification, the Board shall
4 take appropriate steps to expedite the resolution of that Complaint. Following receipt of
5 the licensee's response to the Complaint, Board counsel shall promptly file a motion for
6 summary disposition on the ground that no genuine issues of material fact are in
7 dispute, pursuant to KRS 13B.090(2). The licensee shall not be permitted to re-litigate
8 either the criminal conviction or disciplinary sanction; the only available defense is that
9 the certification of the document is fraudulent. If the licensee has admitted the
10 occurrence of the criminal conviction or disciplinary action in the response, no additional
11 response is required or permitted to the motion for summary disposition. If the licensee
12 has denied the occurrence of the criminal conviction or disciplinary sanction, and
13 alleges that the certification is fraudulent, the licensee may file a response to the motion
14 for summary resolution within twenty (20) days of receipt of the motion. Once the
15 assigned hearing officer determines that no response is permitted or has received the
16 written response within the time allotted or determines that a response was not filed
17 within the allotted time, the hearing officer shall issue a ruling upon the motion as soon
18 as possible but no later than thirty (30) days after the motion is submitted for decision.
19 If the hearing officer issues a recommended order, the recommended order shall be
20 presented to the Board's Hearing Panel at its next meeting for resolution and imposition
21 of the sanction required by this section.

Adopted:

7/20/2012
DATE


PRESTON P. NUNNELLEY, M.D., PRESIDENT
KENTUCKY BOARD OF MEDICAL LICENSURE

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 26, 2012 at 11:00 a.m. at the offices of the Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 19, 2012, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 1, 2012. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: C. Lloyd Vest II, General Counsel, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222, phone (502) 429-7150, fax (502) 429-7118.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: C. Lloyd Vest II, General Counsel, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222: (502) 429-7150.

(1) Provide a brief summary of:

- (a) What this administrative regulation does: This administrative regulation establishes the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.
- (b) The necessity of this administrative regulation: It is necessary to promulgate this regulation to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.
- (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation acts specifically to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation acts specifically to establish the requirements for disciplinary proceedings, reception of grievances, meeting dates of the Board and Panels and mandatory reporting requirements.

(2) If this is an amendment to an existing regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation; This amendment establishes requirements for investigating grievances regarding prescribing, establishes the schedule of Board and Panel meetings and sets out mandatory reporting requirements.
- (b) The necessity of the amendment to this administrative regulation; It is necessary to promulgate this regulation to establish the requirements for investigating grievances regarding prescribing, to establish the schedule of Board and Panel meetings and sets out mandatory reporting requirements.
- (c) How the amendment conforms to the content of the authorizing statutes; This administrative regulation acts specifically to establish the requirements for investigating grievances regarding prescribing, to establish the schedule of Board and Panel meetings and sets out mandatory reporting requirements.
- (d) How the amendment will assist in the effective administration of the statutes. This amendment acts specifically to establish the requirements for investigating grievances regarding prescribing, to establish the schedule of Board and Panel meetings and sets out mandatory reporting requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This amendment will affect all physicians licensed in Kentucky.

- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Physicians will be required to report disciplinary sanctions.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance with this administrative regulation is not expected to incur any additional cost to the physicians.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The Board will be able to assist in curbing the prescription drug epidemic in the Commonwealth of Kentucky.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
- (a) Initially: None
 - (b) On a continuing basis: None
- (6) What is the source of funding to be used for the implementation and enforcement of this administration regulation: None.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase of fees or funding will be necessary.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees nor does it directly or indirectly increase any fees.
- (9) TIERING: Is tiering applied? (Explain why or why not)

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 201 KAR 9:081

Contact Person: C. Lloyd Vest II

Phone number: 502/429-7150

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? None

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
KRS 311.565(1)(a), 218A.205

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years?
None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: